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IV. REMARKS:

Concerns under 35 U.S.C. §103: The examiner expressed concern under 35 U.S.C. §103 as to claims 1-4, 6-12, 14-18, 20-26 and 28-30 based on US Pat. No. 6,949,264 (the McGrew et al. patent), US Pat. No. 6,506,413 (the Ramackers patent), US Pat. No. 5,536,523 (the Blauel et al. patent), US Pat. No. 6,133,317 (the Hart patent), and US Pat. No. 7,005,513 (the Yura et al patent).

The Pending Claims as Amended are Not Prima Facie Obvious: Applicant first submits that the claims remaining in this case for examination at this time (claims 1-30), are not *prima facie* obvious. As the Examiner is well aware, "[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP 2142. The MPEP goes on to state that "To establish a *prima facie* case of obviousness, three basic criteria must be met:

- [1] First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- [2] Second, there must be a reasonable expectation of success.
- [3] Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

MPEP 2143, Basic Requirements of a *Prima Facie* Case of Obviousness. Applicant submits that none of these three criteria can not be met with respect to the 35 U.S.C §103 and explains its position as follows:

The Prior Art Reference Does Not Teach or Suggest All Claim Limitations of the Pending Claims: None of the cited references, either alone or in combination (i.e., none of: McGrew et al, US 6,949,264; Ramackers, US 6,506,413; Blauel et al, US 5536,523; Hart, US 6,133,317; or Yura et al, US 7,005,513) discloses, teaches or suggests all limitations of any of the claims as they now stand. As a preliminary, explanatory matter, Applicant explains that, because of the examiner's earlier concern relative to the appearance of trademarks in the claims (e.g., Heritage Complete™, Heritage Osteoguard™, Heritage Platinum™), the Applicant, in an August 8, 2006 reply to office action, amended claims with explicit appearances of such tradenames in order to replace such names

with their ingredients. Thus, as but one example, the tradename Heritage Complete™ does not appear explicitly in the claims, but its ingredients do.

As to non-disclosure, the following are limits of each of the independent claims now at issue (claims 1, 9, 17 and 23) that are not disclosed in any of the cited references: PABA, octosanol, chlorella, papain, rutin, coenzyme Q10, hydroxyadipate citrate, pine bark extract, rutin, quercetin, pancreatin, lactase, lipase, amylase, catalase, chymotrypsin, trypsin, cellulase, and zinc gluconate. These substances simply do not appear in any of the five patent references relied on by the examiner. In this regard, and as mentioned above, the McGrew patent's reference to Heritage Consumer Products, LLC and Heritage Consumer Products, Co. (see page 4, column 2 of McGrew) does not amount to disclosure of an Heritage Health Products Co. products (which appear as limits in every pending claim) because the two companies are entirely different, mutually distinct, unaffiliated companies. As such, a *prima facie* case of obviousness is not supported. For these reasons, the Applicant respectfully explains that the Office has not met its burden relative to obviousness.

In support of the fact that Heritage Health Products Co. is entirely different from each Heritage Consumer Products, LLC and Heritage Consumer Products Co., the Applicant has provided Exhibit A (declaration of Karl G. Schakel, President of Heritage Health Products Co.) and Exhibit B (webpages relative to each company confirming that, indeed, the companies - and their products - are entirely different).

Further, the Examiner indicates that "it would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the cited references ... in order to provide for a health enhancement system...." However, such an "obvious to combine" concern presumes, of course, that the cited references disclose all claim elements in combination, and as explained above, the cited references clearly do not. The Applicant would add that an "obvious to try" rejection certainly cannot be maintained where, as here, there is no suggestion "to modify the reference or to combine reference teachings" (see MPEP 2143, the first requirement for a *prima facie* case of obviousness).

Additional Information:

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Importantly, it should be understood that the amendments submitted herein are made as a matter of practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Amendments are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights that the Applicant may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Applicant expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in *direct or* equivalency coverage is believed to exist, and no change or reduction in *direct or* equivalency coverage is intended through the presentation of this amendment.

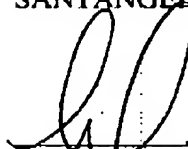
V. Conclusion

In a November 2, 2006 final office action, the Office raised concerns under 35 USC § 103 as to claims 1-4, 6-12, 14-18, 20-26 and 28-30 based on certain patent references. The Applicant submits this explanation, amendment to the specification and claims, and request for reconsideration to fully address the Office's action. The Applicant believes all concerns have been addressed and that all claims remaining in the case – claims 1-4, 6-12, 14-18, 20-26 and 28-30 – are in condition for allowance. Reconsideration and allowance of these remaining claims is respectfully requested at the Examiner's earliest convenience. Finally, should the Examiner have any remaining questions or disagree with any of Applicant's explanations, it is requested that the Examiner contact the undersigned by telephone in order to expedite the processing of this application.

Dated this 2nd day of April, 2007.

Respectfully submitted,

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